IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8014 of 1989
with
CIVIL APPLICATION NO. 1825 OF 1991

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GM GAJERA

Versus

GUJARAT HOUSING BOARD

Appearance:

MR SM MAZGAONKER FOR THE PETITIONER

MS KETTY A MEHTA for Respondent No. 1, 2, 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 30/06/2000

ORAL JUDGEMENT

1. The two petitioners in this Special Civil Application are working as Superintendents in the employment of the respondent Gujarat Housing Board. They

have approached this Court with a grievance that 8 newly created posts of Superintendents in Estate Manager's Officer under order dated 24-10-1989 should be filled by promotion from the channel of Rent Collectors to which the present petitioners belong. It is stated on behalf of the petitioners that contrary to the Regulations framed by the Board, the said newly created posts of Superintendent in the higher scale of pay of Rs. 2000-3200 are proposed to be filled from the clerical cadre contrary to the provisions in the Regulations.

2. Learned counsel appearing for the petitioners invited the attention of this Court to Regulation 11(3)(c) and 11(3)(g) (quoted below) which contain the ladder of promotion provided to employees in the clerical cadre to the posts of Superintendent.

"11(3) In making an appointment to any post by promotion the conditions of services of any allocated servant shall not be varied to his disadvantage.

The ladder of promotion shall be as under :-

(a) x x x x

(b) x x x x

(c) Junior Clerk/Typist - Recordkeeper

(1) Senior Clerk/Storekeeper - Senior Accounts Clerk - Cashier

(2) Head Clerk/Senior Cashier/Junior Assistant/Junior Auditor

(3) Senior Assistant/Senior Auditor/Assistant Secretary

(4) Superintendent

(5) Assistant Accounts Officer-Dy. Estate Manager

(6) Secretary-Land Officer-Competent Authority-Accounts Officer-Estate Manager-Administrative Officer

(7) Assistant Housing Commissioner (Estate Management)

(d) x x x x

(e) x x x x

(f) x x x x

(g) Junior Rent Collector-Colony Supervisor

Supervising Rent Collector-Superintendent (Estate Management)

Assistant Estate Manager

Deputy Estate Manager (in the ratio of 1:1)

Estate Manager (in the ratio of 1:3)"

3. The learned counsel appearing for the petitioners

placed reliance on Regulation 29 which contains the mention of posts of Superintendent, Estate Manager's Office, and the pay scale and qualification prescribed for that post. Regulation 29(A) reads as under:-

"29(A) SUPERVISING RENT COLLECTOR / (B) SUPERINTENDENT IN ESTATE MANAGERS OFFICE:
SCALE: Rs. 425-15-500-EB-15-560-20-600-EB-20-700
(1) The post shall be filled in by promotion of Board's employees working in Board's subordinate service on the basis of seniority cum merits.
(2) To be eligible for promotion an employee:
(i) should have rendered atleast 3 years continuous service as Rent Collector/Colony Supervisor"

4. On behalf of the petitioners learned counsel contends that for the post mentioned in Regulation 29(A) of Superintendent in Estate Managers office only employees with three years minimum service as Rent Collector or Colony Supervisor can be considered and those in the clerical cadre cannot be allowed the chance of promotion to this post.

5. Learned counsel appearing for the Board in her reply, pointed out that the newly created 8 posts in higher scale of pay are general posts of Superintendent mentioned in Regulation 22. The said Regulation 22 reads as under:-

"22.SUPERINTENDENT:
SCALE : RS.650-30-740-35-810-EB-35-880-40-1040
(1) The post shall be filled in by promotion of Board's employee working in Board's subordinate service, on the basis of seniority cum merits.
(2) To be eligible for promotion an employees:
(i) should have rendered atleast two years continuous service as qualified Divisional Accountant or three years continuous service as Sr. Asstt./Auditor/Asstt. Secretary.
(3) On promotion, the officer will be trial for one year, on expiry of which, he may be finally promoted or his trial period may be extended or he may be reverted to the post from which he was promoted as the case may be on the basis of the performance during the trial period. On expiry of the extended trial period his case may be again reviewed and dealt with in the same manner."

6. It is clear from Regulation 22 that the posts of

Superintendent is to be filled from the cadre of Senior Assistants/Auditors and Asst. Secretary which all belong to the Clerical Cadre as mentioned in Regulation 11(3)(c) (quoted above).

7. On behalf of the petitioner it is contended that the posts of Superintendents in Estate Manager's Office must be filled in accordance with Regulation 29 and from the employees working as Rent Collector/Colony Supervisor. It is submitted that the Board adopted a camouflage in giving nomenclature to the posts, creating the posts in higher scale of pay and deciding to fill all from the clerical cadre.

8. The main question that falls for consideration is whether the newly created 8 posts in the higher scale of pay of Rs. 2000-3200 are posts referred to in Regulation 22 or Regulation 29.

9. On behalf of the Board it is pointed out that scale of pay of Superintendent is Rs. 650-1040 (unrevised) and its revised scale in the year 1989 was Rs.2000-3200.

10. In comparison to above, the posts of Superintendents in Estate Manager's Officer mentioned in Regulation 29 is lower scale of pay of Rs. 425-700. (unrevised).

11. It is thus clear that the 8 posts created of Superintendent for Estate Manager's Office in the higher scale of pay, i.e., Rs.2000-3200 (revised) are the posts mentioned in Regulation 22 and are not the posts in the lower scale of pay mentioned in Regulation 29.

12. Learned counsel appearing for the petitioner asserts that when the post of Superintendent is created for Estate Manager's Office, it must in accordance with Regulation 29 be filled by persons from the cadre of Rent Collectors.

13. The above argument cannot be accepted for the simple reason that the posts created of Superintendents is in the higher scale of pay and not in the lower scale of pay, i.e., Rs.425-700 (unrevised) or in its revised scale of pay. There is no merit in the contention that since the posts of Superintendent have been created for the office of the Estate Manager, it must be filled from the clerical cadre in accordance with Regulation 29. As has been found above, the post of Superintendent is created in higher scale of pay referrable to Regulation

22 and merely because some of the Superintendents appointed on these posts are required to work in the office of Estate Manager is no ground that those newly created posts must be filled from the channel of Rent Collectors. On behalf of the Board, it is also pointed out, in their reply to the Special Civil Application, that out of 8 posts, 4 posts have been made available to the channel of Rent Collectors and two of the employees have been promoted as Asst. Estate Managers.

14. For the aforesaid reasons, this Court finds no substance in this petition and the same is accordingly dismissed. Rule is discharged. There shall be no order as to costs.

15. The Civil Application shall also stand dismissed. Rule is discharged. Interim relief is vacated.

(D.M. DHARMADHIKARI, C.J.)

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